

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6778**

**BILL NUMBER:** HB 1114

**NOTE PREPARED:** Mar 22, 2006

**BILL AMENDED:** Mar 14, 2006

**SUBJECT:** Various Property Matters.

**FIRST AUTHOR:** Rep. Foley

**FIRST SPONSOR:** Sen. Steele

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

***Title Insurance Enforcement Fund:*** The bill establishes the Title Insurance Enforcement Fund. The bill authorizes the Budget Agency to augment the appropriations to the Department of Insurance from the Title Insurance Enforcement Fund.

***Title Insurance Policy Fee:*** The bill imposes a \$5 fee on the purchaser of a title insurance policy and requires the insurer to deposit \$3 of the fee in the Title Insurance Enforcement Fund (the insurer is allowed to retain \$2 of the fee for administrative costs).

***Land Conveyance:*** The bill specifies the language sufficient to incorporate by reference a recorded covenant, restriction, easement, or other encumbrance in a conveyance of land.

***Payment of Taxes and Special Assessments:*** The bill provides that an adverse possessor or claimant who wishes to establish title to land or real estate must pay the taxes and special assessments that the adverse possessor or claimant reasonably believes in good faith to be due on the land or real estate. (Current law requires the adverse possessor or claimant to pay the taxes and special assessments due on the land or real estate.)

***County Recorder Payment Methods:*** The bill provides the methods of payment that a county recorder may authorize that the county recorder may be paid with. The bill provides that a county recorder may collect a sum if it is charged a fee for the use of a financial instrument. The bill requires a court clerk and a county recorder

to collect a fee from a person using a bank card or credit card if there is a vendor transaction charge or discount fee.

***Payment Processing Companies:*** This bill allows a court clerk and a county recorder to contract with a payment processing company. It allows the payment processing company to collect a transaction fee from the person using the bank card or credit card.

***Social Security Redaction:*** The bill requires redaction of Social Security numbers (unless required under other law) in documents filed with the county recorder. This bill requires an instrument that conveys, creates, encumbers, assigns, or otherwise disposes of an interest in or lien on property (other than a federal lien) to have the Social Security numbers redacted before recording and filing unless required by other law. It reduces the standard for the redaction of Social Security numbers in recorded or filed documents from "to the extent possible" to "to the extent practicable and as permitted by law".

***Infraction:*** The bill adds a culpability standard for the Class A infraction that may be committed when recorded documents containing Social Security numbers are disclosed by the county recorder's office.

***Identification Security Fee:*** This bill provides that a county recorder shall charge a county identification security protection fee for recording or filing a document. It amends the affirmation regarding redacting a Social Security number that must be attached to a document that is recorded or filed.

***Miscellaneous Provisions:*** The bill provides that, for purposes of the law concerning credit services organizations: (1) the definition of "credit services organization" includes a person that sells the service of obtaining a delay or forbearance of a buyer's obligation under a mortgage; (2) the definition of "extension of credit" includes the right to delay or avoid foreclosure on a buyer's mortgage; (3) it is a deceptive act to take power of attorney from a buyer for any purpose other than inspecting documents as provided by law; and (4) a credit service organization must obtain a surety bond in the amount of \$25,000 instead of \$10,000 before doing business in Indiana.

**Effective Date:** Upon passage; January 1, 2006 (retroactive); July 1, 2006.

**Explanation of State Expenditures:** ***Miscellaneous Provisions:*** The bill allows the Attorney General's office to prosecute an entity for taking a power of attorney from a buyer for any purpose other than inspecting documents as provided by law. The bill makes statute conform to current practice, as the Attorney General's office currently prosecutes such entities. Therefore, no additional impact to state expenditures would result.

**Explanation of State Revenues:** ***Title Insurance Policy Fee:*** The Department of Insurance would retain \$3 of a proposed \$5 fee that would be assessed on consumers for each title insurance transaction made by an insurer. The \$3 fee would be deposited into the proposed Title Insurance Enforcement Fund.

***Title Insurance Enforcement Fund:*** This bill establishes the Title Insurance Enforcement Fund to provide supplemental funding for Department operations involving title insurance, and to provide staff to enforce title insurance matters. The State Budget Agency would be allowed to augment appropriations to the Department of Insurance from the balances of the proposed Title Insurance Enforcement Fund.

The Commissioner of Insurance would administer the Enforcement Fund. Policy fees (as described above), fines, monetary penalties, costs for violations, and other amounts required by law to be remitted would be

deposited into the Enforcement Fund. Any fund balances remaining at the end of a state fiscal year would not revert to the state General Fund.

**Infraction:** The bill adds culpability language to a Class A infraction for disclosing a Social Security number on a document without a prior search for and removal of the number using redacting technology. The provision could potentially reduce the number of persons convicted of committing a Class A infraction.

**Penalty Provision:** The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund.

**Explanation of Local Expenditures: Social Security Redaction:** Under current law, beginning January 1, 2008, county recorders will be responsible for searching documents for a Social Security number, redacting documents that contain the number, and recording certification that the individual reviewed the entire document and took reasonable care to redact the Social Security number. Current law also provides for county recorders to comply "to the extent *possible*."

This bill specifies that county recorders comply "to the extent *practicable and as permitted by law*." This provision may mitigate costs associated with redacting records.

**Payment Processing Companies:** This provision allows both county clerks and recorders to contract with payment processing companies. Transaction fees could be charged by the company to the person conducting a transaction with a clerk or recorder's office. County clerks and recorders would still collect and deposit the same fees for their services as allowed by law. The bill would allow clerks and recorders to collect any credit card transaction fees charged on behalf of a payment processing company from a person conducting a transaction with a credit card. Therefore, credit card processing fees would not be taken out of the fees collected for a clerk's or recorder's services.

The impact to clerks and recorders would depend on the contract arrangements they were to make with a payment processing company.

**Explanation of Local Revenues: Identification Security Fee:** Current law (P.L. 91-2005) requires county recorders to charge a fee for recording a document in accordance with IC 36-2-7-10 (which includes additional pages, cross-referencing, deeds, fax machine transfers, and mortgage and real estate recordings). The current fee is two dollars and is currently deposited in a county's identification security protection fund. The protection funds are used by county recorders to purchase, upgrade, implement, or maintain redacting technology.

The bill clarifies that this \$2 county identification security protection fee would be charged in addition to any other fee charged for recording a document under IC 36-2-7-10. The bill would expand this fee to be charged for *filing* a document in addition to recording. The \$2 fee would continue to be deposited in county identification security protection funds. By expanding the security protection fee to document filings, this provision could increase recorder fee revenue to county dedicated funds.

The impact of this provision to local revenues should be neutral with respect to fees charged under IC 36-2-7-10 already.

**County Recorder Payment Methods:** Under the bill, county recorders could accept payment for transactions by cash, check, bank draft, money order, bank or credit card, electronic fund transfer, or by any other

authorized financial instrument. Recordors would be allowed to charge a fee on transactions involving credit cards or bank transfers to cover the transaction costs for providing the service.

***Infraction:*** This provision could potentially reduce the number of people who could be convicted of committing a Class A infraction under current Social Security redaction law. Local governments receive revenue from court fees when court actions are filed and a judgment is entered.

**State Agencies Affected:** Department of Insurance; State Budget Agency; Attorney General.

**Local Agencies Affected:** County recorders, circuit court clerks, trial courts, local law enforcement agencies.

**Information Sources:**

**Fiscal Analyst:** Chris Baker, 317-232-9851.